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October 31, 2022

BY ELECTRONIC MAIL AND ECF

Honorable J. Kate Stickles
United States Bankruptcy Judge
5th Floor, Courtroom 6
824 N. Market Street
Wilmington, DE 19801

**Re: Chapter 7 Trustee of NLG, LLC v. Selective Advisors Group, LLC
Case No. 21-11269/Adversary No. 22-50086**

Dear Judge Stickles,

On October 25, 2022, this Court held a hearing on the Trustee's *Motion for an Order Approving Agreement By and Among the Chapter 7 Trustee and Liza Hazan* (the "9019 Motion") [D.N. 84], as well as Juan Ramirez, Jr.'s *Objection* to the Motion (the "Ramirez Objection") [D.N. 87]. We regrettably write to inform the Court that the Trustee has since become aware of material misrepresentations made by Mr. Ramirez in connection with the Ramirez Objection.

Attached as Exhibit 1 to the Ramirez Objection is an order (the "Order") entered by the Supreme Court of the State of New York (the "NY Court") in a case captioned *Juan Ramirez v. Selective Advisors Group, LLC* (Index No. 654670/2020) (the "NY Case"). The NY Court entered the Order on default, granting Mr. Ramirez's requested relief, including relief involving the confession of judgment central to the Adversary Proceeding in this case. *What Mr. Ramirez failed to disclose, however, is that (1) shortly after entering the Order, the NY Court vacated the Order due to Mr. Ramirez's attempt at perpetrating a fraud on the Court (the "Vacating Order"); and (2) Mr. Ramirez's appeal of the Vacating Order was dismissed on February 22, 2022.*¹

¹ A copy of the Vacating Order is attached as **Exhibit A**.



In the Vacating Order, the NY Court finds that Mr. Ramirez intentionally failed to serve the original petition on the Defendant:

The court granted the [] Order without opposition, but as now demonstrated by Selective the sole reason that the petition was unopposed was because Selective was never actually served with the petition. Rather, service was effectuated on a different, separate and wholly unrelated entity “Selective Advisors Group, LLC” - - a Delaware entity with the same name adding only an “s” to the word Advisor -- *formed by the petitioner’s own client, Chris Kosachuk* (NYSCEF Doc. No. 28, ¶¶ 5, 6; NYSCEF Doc. No. 31). *This does not appear to have been a mistake.* Petitioner’s client served the correct entity in prior litigation between the parties. Accordingly, as service was never effectuated, the court never properly obtained jurisdiction and the [] Order must be vacated.

See Vacating Order at p. 1-2.

Mr. Ramirez then moved to reargue the Vacating Order (the “Motion for Rehearing”). In the Motion for Rehearing, Mr. Ramirez makes clear that he “*accepts the decision to set aside and vacate [the Order]*,” but takes issue with the NY Court disparaging his integrity. The Motion for Rehearing was met by a cross motion for sanctions filed by the Defendant (the “Motion for Sanctions”).

On March 12, 2021, the Court entered an Order denying the Motion for Rehearing and granting the Motion for Sanctions (the “Sanctions Order”).² In denying the Motion for Rehearing, the Court found that “[t]he petition—and [the Motion for Rehearing]—are both wholly improper attempts to relitigate issues already decided, both in prior legal actions between Mr. Ramirez’s client and Selective, and in this special proceeding.” See Sanctions Order at p.2.

And in granting the Motion for Sanctions, the Court specifically found that Mr. Ramirez attempted to perpetrate a fraud on the court:

Put another way, *Mr. Ramirez appears to have attempted to perpetrate a fraud on the court in the filing of this special proceeding.* His filing of this motion is equally outrageous. Selective is entitled to recover its reasonable legal fees and costs in having to defend against this patently frivolous motion.

Id. at p.3.

Mr. Ramirez appealed both the Vacating Order and the Sanctions Order.³ *However, on February 22, 2022, the appellate division of the NY Court dismissed the appeal of the Vacating*

² A copy of the Sanctions Order is attached hereto as Exhibit B.

³ Copies of the Notices of Appeal of the Vacating Order and Sanctions Order are attached as Exhibit C and Exhibit D, respectively.



Order and found that Mr. Ramirez could not obtain any relief because his claims were time-barred (the “Order Dismissing Appeal”).⁴ So, the only remaining appeal in the NY Case is an appeal of the Sanctions Order, which, even if successful, would not impact the NY Court’s holding to set aside the Order. In other words, there is no ongoing appeal of the Order.

Despite the actual status of the NY Case and the NY Court’s clear findings, Mr. Ramirez held the Order out to this Court and the Trustee as a valid Order that is merely subject to appeal. Aside from Mr. Ramirez’s false implication that it was the Defendant who appealed the Order, Mr. Ramirez’s appeal of the Vacating Order has already been decided and dismissed. Nowhere in the Ramirez Objection does Mr. Ramirez reference the findings against him, nor any of the other orders entered by the NY Court. Even worse, Mr. Ramirez failed to disclose such orders at the hearing when questioned by Your Honor. In reality, the NY Court found that Mr. Ramirez perpetrated an intentional fraud on the Court and, with respect to the Order, left the pre-suit status between the parties undisturbed.

Your Honor generously accommodated Mr. Ramirez by allowing him to argue his Motion in Delaware as a *pro se* party (even though he is a Florida-licensed, practicing attorney) and do so without physically appearing at the hearing. Mr. Ramirez has exploited this generosity and, like the NY Court, appears to have committed a fraud on this Court. If not overt fraud, certainly misrepresentation by omission.

To the extent this Court chooses to consider the Ramirez Objection in deciding the Motion, the Trustee respectfully requests that it does so in the context of the events described above. Mr. Ramirez’s conduct dovetails with the theme of this case: a perpetual pattern of abusing the judicial system with callous disregard. The Trustee expressly reserves his rights to seek sanctions or other relief in connection with the Ramirez Objection.

Respectfully yours,

/s/ Seth A. Niederman

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/s/ Jesse M. Harris

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 jesseharris@foxrothschild.com

cc: Juan Ramirez, Jr. (via e-mail)
 Christopher Kosachuk (via e-mail)

⁴ A copy of the Order Dismissing Appeal is attached as Exhibit E.

Exhibit “A”

FILED: NEW YORK COUNTY CLERK 03/09/2021 10:54 AM

NYSCEF DOC. NO. 154

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/09/2021

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: <u>HON. ANDREW BORROK</u>	PART	IAS MOTION 53EFM
	<i>Justice</i>	
<hr style="border-top: 1px dashed black;"/>		X
JUAN RAMIREZ,	INDEX NO.	<u>654670/2020</u>
Plaintiff,	MOTION DATE	<u>02/23/2021</u>
	MOTION SEQ. NO.	<u>003</u>

- v -

SELECTIVE ADVISORS GROUP, LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152

were read on this motion to/for

VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Selective Advisor Group, LLC's (Selective) motion to vacate the court's decision and order dated February 11, 2021 (the **Prior Order**) and dismissing the petition or, in the alternative, granting Selective leave to interpose a response to the petition is granted.

The court granted the Prior Order without opposition, but as now demonstrated by Selective the sole reason that the petition was unopposed was because Selective was never actually served with the petition. Rather, service was effectuated on a different, separate and wholly unrelated entity "Selective Advisors Group, LLC" -- a Delaware entity with the same name adding only an "s" to the word Advisor -- formed by the petitioner's own client, Chris Kasachuk (NYSCEF Doc. No. 28, ¶¶ 5, 6; NYSCEF Doc. No. 31). This does not appear to have been a mistake. Petitioner's client served the correct entity in prior litigation between the parties. Accordingly,

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NYSCEF DOC. NO. 154

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/09/2021

as service was never effectuated, the court never properly obtained jurisdiction and the Prior Order must be vacated.

For the avoidance of doubt: the judgment, to the extent vacated pursuant to the Prior Order, is reinstated.

Additionally, upon vacatur, the petition must be dismissed. Mr. Ramirez has no standing to proceed as a “third-party creditor” to vacate the subject judgment. He is not a creditor but has an attorney-client relationship with the judgment debtor. Moreover, the petition is also an improper attempt to relitigate issues resolved in prior legal proceedings (*Syncora Guarantee Inc. v J.P. Morgan Securities LLC*, 110 AD3d 87 (1st Dept 2013)).

Accordingly, it is

ORDERED that respondent’s motion to vacate the court’s decision and order dated February 11, 2021 (NYSCEF Doc. No. 24) is granted; and it is further

ORDERED that upon vacatur of the court’s prior order, the petition is dismissed, with costs and disbursements to the respondent, and it is further

ORDERED that respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) and the Clerk is directed; and it is further

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NYSCEF DOC. NO. 154

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/09/2021

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

3/9/2021

DATE



20210309105426ABORROK95A3044BE2CD4F5184E669D001F4D378

ANDREW BORROK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED
<input checked="" type="checkbox"/>	GRANTED
<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

 DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT

 OTHER REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

Exhibit “B”

FILED: NEW YORK COUNTY CLERK 10/15/2021 06:53 PM

NYSCEF DOC. NO. 172

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/15/2021

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: <u>HON. ANDREW BORROK</u>	PART	53
	Justice	
<hr style="border-top: 1px dotted black;"/>		X
JUAN RAMIREZ,	INDEX NO.	<u>654670/2020</u>
Plaintiff,	MOTION DATE	<u>03/12/2021</u>
	MOTION SEQ. NO.	<u>004</u>
- V -		
SELECTIVE ADVISORS GROUP, LLC,	DECISION + ORDER ON MOTION	
Defendant.	<hr style="border-top: 1px dotted black;"/>	
X		

The following e-filed documents, listed by NYSCEF document number (Motion 004) 157, 158, 159, 160, 161, 163, 164, 165, 166, 167, 168
 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, Juan Ramirez's motion to reargue the court's prior decision dated March 9, 2021 (the **Prior Decision**; NYSCEF Doc. No. 155) is denied, and Selective Advisors Group, LLC's (**Selective**) cross-motion for sanctions in the form of reasonable attorneys fees and costs is granted.

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR § 2221[e]). A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion" (CPLR § 2221[d]).

FILED: NEW YORK COUNTY CLERK 10/15/2021 06:53 PM

NYSCEF DOC. NO. 172

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/15/2021

In his motion for a “rehearing,” Mr. Ramirez fails to allege any matters of fact or law that the court purportedly overlooked or misapprehended in its Prior Decision. Nor does Mr. Ramirez identify any new facts or any change in the law that would alter the court’s prior determination that Mr. Ramirez lacks standing to proceed as a “third-party creditor” to vacate the subject judgment. As the court previously explained, Mr. Ramirez is not a creditor but has an attorney-client relationship with the judgment debtor. The petition – and this motion – are both wholly improper attempts to relitigate issues already decided, both in prior legal actions between Mr. Ramirez’s client and Selective, and in this special proceeding.

Turning to the cross motion for sanctions, pursuant to 22 NYCRR 130-1.1, an award of costs, including attorneys’ fees, may be imposed against a party for frivolous conduct (*see* 22 NYCRR 130-1.1[a],[b]). Conduct is considered frivolous if it is “determined to be completely without merit in law or undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another” (*Finkelman v SBRE, LLC*, 71 AD3d 1081, 1081-82 [2d Dept 2010]). Mr. Ramirez’s conduct indisputably meets these criteria and the court previously indicated as much in the Prior Decision:

The court granted the Prior Order without opposition, but as now demonstrated by Selective the sole reason that the petition was unopposed was because Selective was never actually served with the petition. Rather, service was effectuated on a different, separate and wholly unrelated entity “Selective Advisors Group, LLC” -- a Delaware entity with the same name adding only an “s” to the word Advisor -- formed by the petitioner’s own client, Chris Kasachuk (NYSCEF Doc. No. 28, ¶¶ 5, 6; NYSCEF Doc. No. 31). *This does not appear to have been a mistake.* Petitioner’s client served the correct entity in prior litigation between the parties. Accordingly, as service was never effectuated, the court never properly obtained jurisdiction and the Prior Order must be vacated.

(NYSCEF Doc. No. 155 [emphasis added]).

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INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/15/2021

Put another way, Mr. Ramirez appears to have attempted to perpetrate a fraud on the court in the filing of this special proceeding. His filing of this motion is equally outrageous. Selective is entitled to recover its reasonable legal fees and costs in having to defend against this patently frivolous motion.

Accordingly, it is

ORDERED that the petitioner's motion to reargue is denied; and it is further

ORDERED that the respondent's cross motion for sanctions is granted and the issue of reasonable attorneys' fees and costs incurred in connection with this motion is referred to a Special Referee or Judicial Hearing Officer (JHO) to hear and determine, and it is further

ORDERED that a JHO or Special Referee shall be designated to determine the amount of such reasonable legal fees and costs, which are hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are

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INDEX NO. 654670/2020

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posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for respondent shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

10/15/2021
DATE
20211015185346ABORROK7F3300C098C94EE6A344E8C99D8E2A68

ANDREW BORROK, J.S.C.

FILED: NEW YORK COUNTY CLERK 10/15/2021 06:53 PM

INDEX NO. 654670/2020

NYSCEF DOC. NO. 172

RECEIVED NYSCEF: 10/15/2021

CHECK ONE:

<input checked="" type="checkbox"/>
<input type="checkbox"/>
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CASE DISPOSED

 DENIED

NON-FINAL DISPOSITION

 OTHER

GRANTED

GRANTED IN PART

SETTLE ORDER

SUBMIT ORDER

APPLICATION:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

 REFERENCE

CHECK IF APPROPRIATE:

FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

Index No.: 654670/2020

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Juan Ramirez, Jr., *pro se* Petitioner, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an order [NYSCEF Doc. No. 154] of the Supreme Court State of New York, County of New York, (Hon. Andrew Borrok, J.S.C.), dated March 9, 2021 and filed on March 9, 20201. The Notice of Entry was filed on March 10, 2021. [NYSCEF Doc. 155].

A true and correct copy of the order appealed from, along with Notice of Entry, is annexed hereto as Exhibit A.

The Informational Statement in a Civil Action is annexed hereto as Exhibit B.

Dated: New York, New York

March 29, 2021

Respectfully submitted,

By: Juan Ramirez, Jr

FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

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NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

Index No.: **654670/2020**

**AFFIRMATION OF
SERVICE**

Juan Ramirez, Jr. affirms that on March 29, 2021, I served via NYSCEF and/or email/regular mail to parties on the attached service list the attached Notice of Appeal with Informational Statement in a Civil Action.

Dated: New York, New York
March 29, 2021

Respectfully submitted,

By: Juan Ramirez, Jr
Juan Ramirez, Jr.
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Coral Gables, FL 33146
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FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

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FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Index No.: **654670/2020**

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

NOTICE OF APPEAL

Juan Ramirez, Jr.
Pro Se Petitioner
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Exhibit “C”

FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

Index No.: **654670/2020**

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Juan Ramirez, Jr., *pro se* Petitioner, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an order [NYSCEF Doc. No. 154] of the Supreme Court State of New York, County of New York, (Hon. Andrew Borrok, J.S.C.), dated March 9, 2021 and filed on March 9, 20201. The Notice of Entry was filed on March 10, 2021. [NYSCEF Doc. 155].

A true and correct copy of the order appealed from, along with Notice of Entry, is annexed hereto as Exhibit A.

The Informational Statement in a Civil Action is annexed hereto as Exhibit B.

Dated: New York, New York

March 29, 2021

Respectfully submitted,

By: Juan Ramirez, Jr

FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

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FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

Index No.: **654670/2020**

**AFFIRMATION OF
SERVICE**

Juan Ramirez, Jr. affirms that on March 29, 2021, I served via NYSCEF and/or email/regular mail to parties on the attached service list the attached Notice of Appeal with Informational Statement in a Civil Action.

Dated: New York, New York
March 29, 2021

Respectfully submitted,

By: Juan Ramirez, Jr
Juan Ramirez, Jr.
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FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

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FILED: NEW YORK COUNTY CLERK 03/29/2021 02:48 PM

NYSCEF DOC. NO. 169

INDEX NO. 654670/2020

RECEIVED NYSCEF: 03/29/2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Index No.: **654670/2020**

Petitioner,

- against -

SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company

Respondent

NOTICE OF APPEAL

Juan Ramirez, Jr.
Pro Se Petitioner
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Exhibit “D”

FILED: NEW YORK COUNTY CLERK 10/27/2021 05:00 PM

NYSCEF DOC. NO. 174

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/27/2021

**SUPREME COURT OF THE STATE OF NEW
YORK
COUNTY OF NEW YORK**

In the Matter of:

JUAN RAMIREZ, JR.,

Petitioner,

- against -

**SELECTIVE ADVISORS GROUP, LLC, a
Delaware Limited Liability Company**

Respondent

Index No.: 654670-2020

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Petitioner Juan Ramirez, Jr., hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from an order of the Supreme Court State of New York, County of New York, (Hon. Andrew Borrok, J.S.C., dated October 15, 2021, and filed on October 15, 2021).

A true and correct copy of the order appealed from [NYSCEF Doc. No. 172], along with Notice of Entry [NYSCEF Doc. No. 173], is annexed hereto as Exhibit A.

The Informational Statement in Civil Action is annexed hereto as Exhibit B.

Dated: Coral Gables, Florida

October 27, 2021

FILED: NEW YORK COUNTY CLERK 10/27/2021 05:00 PM

NYSCEF DOC. NO. 174

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/27/2021

Respectfully submitted,

By: Juan Ramirez, Jr

Juan Ramirez, Jr.

1172 S. Dixie Hwy. #341

Coral Gables, FL 33146

(305) 667-6609

jr@adrmiami.com

FILED: NEW YORK COUNTY CLERK 10/27/2021 05:00 PM

NYSCEF DOC. NO. 174

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/27/2021

SUPREME COURT OF THE STATE OF NEW
YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Plaintiff,

- against -

SELECTIVE ADVISORS GROUP, LLC

Defendant

Index No.: 6546707/2020

**CERTIFICATE OF
SERVICE**

JUAN RAMIREZ, JR. affirms that on October 27, 2021, I served via US Mail to parties on the attached service list the attached Notice of Appeal and Informational Statement in a Civil Action.

Dated: Coral Gables, Florida
October 27, 2021

Respectfully submitted,

By: Juan Ramirez, Jr
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FILED: NEW YORK COUNTY CLERK 10/27/2021 05:00 PM

NYSCEF DOC. NO. 174

INDEX NO. 654670/2020

RECEIVED NYSCEF: 10/27/2021

SUPREME COURT OF THE STATE OF NEW
YORK
COUNTY OF NEW YORK

JUAN RAMIREZ, JR.,

Plaintiff,

- against -

SELECTIVE ADVISORS GROUP, LLC

Defendant

Index No.: **6546707/2020**

NOTICE OF APPEAL

Juan Ramirez, Jr
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Exhibit “E”

FILED: APPELLATE DIVISION - 1ST DEPT 02/22/2022 10:31 AM
NYSCEF DOC. NO. 35 **Supreme Court of the State of New York** RECEIVED NYSCEF: 02/22/2022

2021-01091

Appellate Division, First Judicial Department

Renwick, J.P., Kennedy, Scarpulla, Rodriguez, Higgitt, JJ.

15345 In the Matter of JUAN RAMIREZ, JR.,
Petitioner-Appellant,

Index No. 654670/20
Case No. 2021-01091

-against-

SELECTIVE ADVISORS GROUP, LLC,
Respondent-Respondent.

Juan Ramirez, Jr., appellant pro se.

Hagan Coury & Associates, Brooklyn (Paul Golden of counsel), for respondent.

Appeal from so much of an order, Supreme Court, New York County (Andrew Borrok, J.), entered on or about March 9, 2021, as dismissed the petition, unanimously dismissed, without costs.

In this case commenced in 2020, petitioner seeks to vacate a judgment of confession entered in 2012. Petitioner's motion for a default judgment against respondent was granted on default. Respondent then moved to vacate the default and for leave to interpose an answer to the petition. Respondent did not seek dismissal of the petition. Respondent did not ask for such relief even informally; instead, it simply argued that it had meritorious defenses. The court vacated the default and dismissed the petition.

"An appeal may be taken . . . as of right . . . 2. from an order . . ., where the motion it decided was made upon notice" (CPLR 5701[a]). However, there is no right to appeal an order that does not decide a motion on notice (CPLR 5701[a][2]; *see Sholes v*

Meagher, 100 NY2d 333 [2003]). Respondent made a motion upon notice, but did not move to dismiss the petition – it sought different relief. Hence, the portion of the order that dismissed the petition was *sua sponte*, and not appealable as of right (see e.g.

Mazzocchi v Gilbert, 185 AD3d 438 [1st Dept 2020], *lv denied* 37 NY3d 908 [2021];

Hladun-Goldmann v Rentsch Assoc., 8 AD3d 73 [1st Dept 2004]). The proper procedure should have been for petitioner to move to vacate the dismissal order and appeal as of right if that motion was denied (CPLR 5701 [a][3]). We decline to grant leave to appeal (CPLR 5701[c]) since petitioner did not move to vacate the February 2012 judgment by

confession within a reasonable time (see *Mark v Lenfest*, 80 AD3d 426 [1st Dept 2011]; see also *Mazzocchi*, 185 AD3d at 438 [dismissing appeal where claims appeared to be time-barred]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: February 22, 2022



Susanna Molina Rojas
Clerk of the Court

FILED: APPELLATE DIVISION - 1ST DEPT 05/12/2022 09:50 AM
NYSCEF DOC. NO. 39

2021-01091

Supreme Court of the State of New York

RECEIVED NYSCEF: 05/12/2022

Appellate Division, First Judicial Department

Present – Hon. Dianne T. Renwick,
Tanya R. Kennedy
Saliann Scarpulla
Julio Rodriguez III
John R. Higgitt,

Justice Presiding,
Justices.

In the Matter of Juan Ramirez, Jr.,
Petitioner-Appellant,

Motion No. **2022-01203**
Index No. **654670/20**
Case No. **2021-01091**

-against-

Selective Advisors Group, LLC,
Respondent-Respondent.

Petitioner-appellant, pro se, having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on February 22, 2022 (Appeal No. 15345),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: May 12, 2022



Susanna Molina Rojas
Clerk of the Court